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7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**  
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10 VAFA SHAMSAI-NEJAD, )  
11 vs. ) Plaintiff, ) Case No. 2:12-cv-00308-RCJ-GWF  
12 CLARK COUNTY SCHOOL DISTRICT, et al., ) ) **ORDER AND REPORT AND**  
13 ) ) **RECOMMENDATION**  
14 ) Defendant. ) Screening of Amended Complaint (#5)  
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16 This matter comes before the Court on Plaintiff's Amended Complaint (#5), filed on April 4,  
17 2012. On March 20, 2012, the Court entered an Order granting Plaintiff in forma pauperis status, but  
18 dismissed without prejudice Plaintiff's complaint, with leave to amend. On April 4, 2012, Plaintiff  
19 filed an Amended Complaint (#5). The Court will now screen that complaint.

20 **DISCUSSION**

21 **II. Screening the Complaint**

22 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a  
23 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to  
24 dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief  
25 may be granted, or seeks monetary relief from a Defendant/Third Party Plaintiff who is immune from  
26 such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be dismissed for failure to  
27 state a claim upon which relief may be granted "if it appears beyond a doubt that the plaintiff can prove  
28 no set of facts in support of his claims that would entitle him to relief." *Buckey v. Los Angeles*, 968

1 F.2d 791, 794 (9th Cir. 1992). A complaint may be dismissed as frivolous if it is premised on a  
2 nonexistent legal interest or delusional factual scenario. *Neitzke v. Williams*, 490 U.S. 319, 327–28  
3 (1989). Moreover, “a finding of factual frivolousness is appropriate when the facts alleged rise to the  
4 level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts  
5 available to contradict them.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a  
6 complaint under § 1915(e), the plaintiff should be given leave to amend the complaint with directions  
7 as to curing its deficiencies, unless it is clear from the face of the complaint that the deficiencies could  
8 not be cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

### 9 **III. Instant Complaint**

10 Plaintiff’s brings this action against several Defendants including Clark County School District  
11 (“CCSD”), Granite Gaming, Glitter Gulch, Steve Burnstine, Herb Pastor, Eastside Cannery, Railroad  
12 Casino, Reva Frey, Mario Lovato, Horseshoe Casino, and Library Gentlemen’s Club.

#### 13 **A. Federal Claim**

14 Plaintiff alleges that she was sexually harassed and therefore subjected to a hostile work  
15 environment by Defendants Library Gentlemen’s Club, Granite Gaming, Glitter Gulch, Steve  
16 Burnstine, Herb Pastor and Mario Lovato.

17 In order to prove a *prima facie* case of sexual harassment/hostile work environment in violation  
18 of Title VII, Plaintiff must show: (a) that she was subjected to sexual advances; (b) that this conduct  
19 was unwelcome; and (c) that the conduct was sufficiently severe or pervasive to alter the conditions of  
20 the victim's employment and create an abusive working environment. *Ellison v. Brady*, 924 F.2d 872  
21 (9th Cir.1991). Plaintiff alleges that the Library Gentleman’s Club, Granite Gaming and Glitter Gulch  
22 along with and through the individual managers/employees Steve Burnstine, Herb Pastor and Mario  
23 Lovato coerced her into performing sexual acts or attempted to coerce her into sexual behavior on  
24 several occasions. Plaintiff alleges that these advances were unwelcome and Plaintiff contacted  
25 Defendants’ legal counsel concerning the harassment. As a result of these actions, Plaintiff alleges a  
26 hostile work environment. Taking these allegations as true, Plaintiff states sufficient facts to state a  
27 claim for sexual harassment/hostile work environment.

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1                   **B. State Law Claims**

2                   Upon review of the Amended Complaint, it appears that Plaintiff is alleging harassment/abuse  
 3 of power by Horseshoe Casino, Railroad Casino, and the Eastside Cannery Casino. It appears that  
 4 Plaintiff was unhappy with the service that she received while being a patron at the above casinos and is  
 5 attempting to allege a cause of action for harassment based on their unsatisfactory service. Further,  
 6 Plaintiff alleges that Defendant Reva Frey injected her cheeks with some substance without Plaintiff's  
 7 permission, and then later forced Plaintiff to sign a consent form. Conceivably, Plaintiff could be trying  
 8 to allege a claim for battery against Defendant Frey. Finally, Plaintiff appears to bring allegations of  
 9 negligence and harassment against CCSD. Plaintiff argues that the administration of the CCSD should  
 10 be abolished, and instead, the parents and grandparents should be responsible for the hiring and  
 11 supervision of the teachers. Plaintiff further requests that the administration and teachers be fined for  
 12 their negligent behavior. Plaintiff's claims for harassment, battery and negligence are state law claims.

13                   To bring an action before federal district court, a plaintiff must state a federal question or the  
 14 parties must be completely diverse in citizenship. *See* 28 U.S.C. §§ 1331 and 1332. Federal district  
 15 courts are courts of limited jurisdiction, deriving their power to hear cases from specific congressional  
 16 grants of jurisdiction. *United States v. Sumner*, 226 F.3d 1005, 1009 (9th Cir. 2000).

17                   **i. Federal Question Jurisdiction**

18                   Pursuant to 28 U.S.C. § 1331, federal district courts have original jurisdiction over “all civil  
 19 actions arising under the Constitution, laws, or treaties of the United States.” “A case ‘arises under’  
 20 federal law either where federal law creates the cause of action or ‘where the vindication of a right  
 21 under state law necessarily turn[s] on some construction of federal law.’” *Republican Party of Guam v.*  
 22 *Gutierrez*, 277 F.3d 1086, 1088-89 (9th Cir. 2002) (quoting *Franchise Tax Bd. v. Construction*  
 23 *Laborers Vacation Trust*, 463 U.S. 1, 8-9 (1983)). The presence or absence of federal-question  
 24 jurisdiction is governed by the “well-pleaded complaint rule.” *Caterpillar, Inc. v. Williams*, 482 U.S.  
 25 386, 392 (1987). Under the well-pleaded complaint rule, “federal jurisdiction exists only when a  
 26 federal question is presented on the face of the plaintiff's properly pleaded complaint.” *Id.* “Dismissal  
 27 for lack of subject-matter jurisdiction because of the inadequacy of the federal claim is proper only  
 28 when the claim is so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise

1 devoid of merit as not to involve a federal controversy.”” *United States v. Morros*, 268 F.3d 695, 701  
 2 (9th Cir. 2001) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 89 (1998) (quotation  
 3 omitted)). It appears Plaintiff is alleging harassment pursuant to Nevada Revised Statute (“NRS”)  
 4 200.57, battery pursuant to NRS 200.481 and conceivably, a claim for negligence against the CCSD.  
 5 Because these matters do not appear to arise under federal law, the Court does not have federal question  
 6 jurisdiction.

7 **ii. Diversity Jurisdiction**

8 Pursuant to 28 U.S.C. § 1332, federal district courts have original jurisdiction over civil actions in  
 9 diversity cases “where the matter in controversy exceeds the sum or value of \$75,000” and where the  
 10 matter is between “citizens of different States.” Diversity jurisdiction requires Plaintiff to be diverse  
 11 from all named Defendants. *See* 28 U.S.C. § 1332. Plaintiff and several of the Defendants appear to be  
 12 Nevada citizens, and therefore the complete diversity requirement is not satisfied.

13 **iii. Supplemental Jurisdiction**

14 “Under the supplemental jurisdiction statute, federal courts have supplemental jurisdiction over  
 15 all other claims that are so related to claims in the action within such original jurisdiction that they form  
 16 part of the same case or controversy under Article III of the United States Constitution.” 28 U.S.C.  
 17 1337(a); *see Mostin v. GL Recovery, LLC*, 210 WL 668808, \*2 (C.D. Cal. 2010). “Jurisdiction over a  
 18 state law claim where it and the federal claim derive from a common nucleus of operative fact, so the  
 19 relationship between the federal claim and the state claim permits the conclusion that the entire action  
 20 before the court comprises but one constitutional case.” *Mine Workers v. Gibbs*, 383 U.S. 715, 725  
 21 (1966). Plaintiff’s claims for battery, negligence and harassment appear to be completely unrelated to  
 22 her claim for sexual harassment/ hostile work environment. The claims include different parties and  
 23 different facts, and therefore do not share the same common nucleus of operative facts. The Court  
 24 therefore finds that it does not have jurisdiction over Plaintiff’s claims against Horseshoe Casino,  
 25 Railroad Casino, Eastside Cannery Casino, Reva Frey and CCSD. The Court will therefore recommend  
 26 dismissal of those claims. Accordingly,

27 **IT IS HEREBY ORDERED** that Plaintiff’s claims against Defendants Library Gentlemen’s  
 28 Club, Granite Gaming, Glitter Gulch, Steve Burnstine, Herb Pastor and Mario Lavoto for sexual

harassment/ hostile work environment may proceed.

**IT IS FURTHER ORDERED** that the Clerk of the Court shall issue summons to the defendants named in the complaint and deliver the summons to the U.S. Marshal for service. The Plaintiff shall have twenty (20) days to furnish to the U.S. Marshal the required USM-285 forms. After Plaintiff receives copies of the completed USM-285 forms from the U.S. Marshal, he has twenty (20) days to file a notice with the court identifying which defendants were served and which were not served, if any. If the Plaintiff wishes to have the U.S. Marshal attempt service again on any unserved defendant, then a motion must be filed with the court identifying the unserved defendant, specifying a more detailed name and address, and indicating whether some other manner of service should be used. Pursuant to the Federal Rules of Civil Procedure Rule 4(m), service must be accomplished within one hundred twenty (120) days from the date that the complaint was filed.

**IT IS FURTHER ORDERED** that henceforth, Plaintiff shall serve upon Defendants, or their attorney if they have retained one, a copy of every pleading, motion, or other document submitted for consideration by the court. Plaintiff shall include with the original paper submitted for filing a certificate stating the date that a true and correct copy of the document was mailed to the Defendant or their counsel. The court may disregard any paper received by a district judge, magistrate judge, or the Clerk which fails to include a certificate of service.

## **RECOMMENDATION**

**IT IS HEREBY RECOMMENDED** that Plaintiff's claims against Defendants Horseshoe Casino, Railroad Casino, Eastside Cannery Casino, Reva Frey and CCSD be **dismissed** for lack of subject matter jurisdiction.

## **NOTICE**

Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held that the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual

1 issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt*  
2 *v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

3 DATED this 6th day of August, 2012.

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6 GEORGE FOLEY, JR.  
7 United States Magistrate Judge  
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